

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11739 of 1997

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Surendra Singh son of late Shri Ram Singh Village + P.O.- Phuhan, P.S.-Barhara, District-Bhojpur at present posted-Junior Field Investigator, Directorate of statistics and Evaluation, Old Secretariat, Government of Bihar, Patna.

.... Petitioner

Versus

1. The State of Bihar
2. The Secretary, Personnel and Administrative Reforms Department, Main Secretariat, Bihar Patna.
3. The Commissioner cum Secretary, Agriculture Department, Government of Bihar, New Secretariat, Bihar, Patna.
4. The Director, Soil Conservation, Agriculture Department, New Secretariat, Bihar Patna.
5. The Secretary, Planning Department, Government of Bihar, Old Secretariat, Bihar, Patna.
6. The Director, Statistics and Evaluation, Planning Department, Government of Bihar, Old Secretariat, Bihar, Patna.
7. The Chairman, Bihar Public Service Commission, Bailey Road, Patna.
8. The Secretary, Bihar Public Service Commission, Bailey Road, Patna.
9. The Officer-on-Special Duty, Bihar Public Service Commission, Bailey Road, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s :	Mr. Surendra Kumar Singh Mr. Tulika Singh
For the B.P.S.C. :	Mr. Kumar Brajendra Nath Mr. Sobodh Chandra Jha
For the State :	Mr. Arvind Kumar, A.C. to S.C.-28

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 05-02-2015

1. Following is the relief prayed for in the present writ application:-

- I. "For issuance of a writ, order or direction commanding the Respondents to continue the services of petitioner from 27.04.1993 to 29.03.1995 and transfer his services from Soil Conservation Department to the Statistics and Evaluation Department in terms of the order passed by Hon'ble High Court in C.W.J.C.

No. 4921 of 1993.

- II. For issuance of a writ order or direction commanding the respondents to make the payment of the salaries for the period from 27.04.1993 to 29.03.1995 under which the petitioner was kept out of job without any reason.”

2. In order to appreciate the background in which the reliefs have been sought for, it will be apt to narrate the factual details, on the basis of the pleadings on record.

3. The Bihar State Sub-ordinate Service Selection Board (hereinafter referred to as the ‘Board’) vide Notification No. 19/87 advertised posts of Junior Field Investigators in the Directorate of Statistics and Evaluation, Government of Bihar. Subsequently, posts of Junior Field Investigator in the Directorate of Statistics and Evaluation under the Planning Department and Field Supervisors under the Directorate of Soil Conservation of Agriculture Department were sought to be filled up through the same advertisement.

4. The petitioner applied. On the basis of result of written examination, he was declared successful and was placed at serial No. 102 of the merit-list. His name was recommended for appointment as Field Supervisor under the Directorate of Soil Conservation. Some of the unsuccessful candidates challenged the process of selection by writ application vide C.W.J.C. No. 7932 of 1991 on the ground that marks scored by candidates in the subject

Hindi were wrongly added in the total marks of individual candidates for the purpose of preparation of merit-list. This Court vide order dated 24.04.1992 passed in C.W.J.C. No. 7932 of 1991 (Sri Satish Kumar & Ors Vs. The State of Bihar & Ors.) allowed the writ application holding that marks scored by candidates in subject Hindi could not be added for the purpose of preparation of merit-list, for making recommendations. The Court directed for preparing a revised merit-list accordingly. The Board, in the meanwhile, was superseded and its functions were assigned to the Bihar Public Service Commission. In the light of this Court's order dated 24.02.1992 passed in C.W.J.C. No. 7932 of 1991, the Bihar Public Service Commission prepared revised list. The position of the petitioner substantially improved in the revised list which went up to 47. As has been noted above, initially that the petitioner's name was recommended for appointment as Field Supervisor under the Soil Conservation Directorate and he in fact had joined as such, upon revision of merit-list with his improved rank, the Bihar Public Service Commission on the basis of second merit-list recommended the petitioner's name for appointment as Junior Field Investigator under the Directorate of Statistics and Evaluation on 20.02.1993. This is not in dispute that total of 113 successful candidates were recommended for appointment by the Bihar Public Service Commission on the basis of second merit-list. The persons who ranked 01 to 96 in the merit-list



were recommended for appointment as Junior Field Investigator under the Statistics and Evaluation Directorate whereas the persons from serial No. 97 to 113 were recommended for appointment as Field Supervisors in the Soil Conservation Directorate. As the petitioner's name was this time recommended for appointment in Directorate of Statistics and not under the Directorate of Soil Conservation where he was working pursuant to recommendation on the basis of unrevised merit-list, the Director, Soil Conservation, by an order dated 27.04.1993 removed the petitioner from service. On the other hand, the Directorate of Statistics and Evaluation did not issue appointment letter to the petitioner, though recommendation to this effect was made. Thus, with better rank, the petitioner came on road after having been removed from the Directorate of Soil Conservation.

5. Challenging the order dated 27.04.1993 (Anneuxre-3), by which he was removed from service, the petitioner and other similarly situated persons approached this Court by filing writ petition giving rise to C.W.J.C. No. 4921 of 1993. This Court vide an order dated 21.05.1993, stayed the order of termination as well as the revised merit-list.

6. The said C.W.J.C. No. 4921 of 1993 was finally disposed of by an order dated 23.03.1994, reported in BBCJ 1995 (561) (Law Lal & Ors. Vs. State of Bihar). The Division Bench of this Court, while disposing of C.W.J.C. No. 4921 and 2856 of 1993 was also

considering the cases of such persons whose names did not figure in the second merit-list. This Court upon considering such facts held as follows:-

“33. However, we may observe that in the event there exists any vacancy, in other departments as was argued before us by the learned counsel, we hope and trust that the State of Bihar shall take a decision in this regard as early as possible for filling up the existing vacancies from amongst the candidates who have been selected strictly in accordance with the second select list.

34. It however, goes without saying that such petitioners whose names also appear in the second select list prepared pursuant to the judgments of this Court shall continue to be employed but their inter se seniority shall depend on their respective positions in the select list and in accordance with law.

7. The petitioner is said to have filed representation before the Agriculture Production Commissioner for treating the continuity of his service in Soil Conservation Directorate in terms of the interim order dated 21.05.1993 and transfer his service to the Directorate of Statistics and Evaluation in terms of subsequent recommendation made by the Bihar Public Service Commission. It appears that despite order of this Court dated 23.03.1994 passed in C.W.J.C. No. 4921 of 1993 in case of Law Lal and Ors. Vs. State of Bihar (supra), the respondents State of Bihar did not issue appointment letters, strictly in accordance with second merit-list, which compelled the petitioner to



file contempt petition being M.J.C. No. 826 of 1994. Finally the petitioner was given appointment as Junior Field Investigator in the Directorate of Statistics and Evaluation vide office order No. 133 dated 23.03.1995, issued under the signature of the Director. The petitioner accordingly submitted his joining. On his joining in Directorate of Statistics and Evaluation, the petitioner raised an objection that his continuity should be maintained from the initial date of his joining in the Directorate of Soil Conservation and he should be treated at par with those appointed in Directorate of Statistics and Evaluation, on the basis of same advertisement in the matter of fixation of salary and other emoluments etc.

8. It is in the background of these facts that the petitioner claims that he was unlawfully kept out of job from 27.04.1993 till 29.03.1995 despite his higher position in the merit-list. Mr. Surender Kumar Singh, learned counsel appearing on behalf of the petitioner, submits that it was purely because of lack of co-ordination between the two departments under the same government i.e. State of Bihar that the petitioner had to face an order of removal dated 27.04.1993. He has contended that there being no dispute that petitioner's name was recommended for appointment under the Directorate of Statistics because of his better position in the merit-list prepared on the basis of same competitive examination, the Directorate of Soil Conservation ought not to have removed the services of the petitioner without

waiting for appointment letter from the Directorate of Statistics and Evaluation which is also under the same State of Bihar. He submits that the petitioner deserves to be treated at par with those who were appointed under the Statistics Directorate on the basis of same selection process in terms of seniority promotion and fixation of pay etc.

9. This has to be kept in mind, which fact is not in dispute that such persons, appointed in the Statistics Directorate on the basis of first merit-list were allowed to continue after publication of second merit-list, whose names figured in the second merit-list. This is also not in dispute that some of the persons appointed under the Statistics Directorate on the basis of first merit-list were placed at lower merit position than the petitioner in the second merit-list, prepared by the Bihar Public Service Commission pursuant to the order of this Court.

10. On analysis of the fact as noted above, the petitioner has been able to make out a case of infringement of his fundamental right under Articles 14 and 16 of the Constitution of India inasmuch as the persons similarly situated or persons having assigned lower merit position than the petitioner, were on the one hand allowed to continue either in Statistics Directorate or in the Directorate of Soil Conservation, whereas the petitioner was forced to remain out of job, despite his better merit position. As has been noted above, the petitioner ranked 47 in the second merit-list whereas persons up to 96

were recommended for appointment for Statistics Directorate, whereas the persons having merit below 96 up to 113 were recommended and appointed in the Directorate of Soil Conservation.

11. Contentions on behalf of the petitioner appears to be right that service of the petitioner was wrongly removed by the Soil Conservation Directorate and he was forced to remain out of job from 27.04.1993, despite the interim order of this Court dated 21.05.1993 and judgment of the Court in C.W.J.C. No. 4921 of 1993 dated 23.03.1994 in case of Law Lal and Ors. Vs. State of Bihar. This Court vide order dated 21.05.1993, had stayed the order dated 27.04.1993, removing the petitioner from service and there was specific direction of this Court in case of Law Lal and Ors. Vs. State of Bihar (supra) that the persons whose names appeared in the second list shall continue to be employed. It was only after institution of contempt petition that the petitioner was appointed by an order dated 23.03.1995 issued by the Director, Directorate of Statistics and Evaluation on the basis of revised merit-list.

12. Neither learned counsel appearing on behalf of the respondent-State of Bihar nor learned counsel representing the Bihar Public Service Commission, have been able to justify the action of the respondents, due to which the petitioner had to remain out of service from 27.04.1993 up to 29.03.1995. Whether the petitioner deserves for appropriate inter se seniority on the basis of his position in the



second merit-list in the cadre of Junior Field Investigator (Statistics) is no more in dispute. In view of clear direction of this Court in case of Law Lal and Ors. Vs. State of Bihar (supra) wherein this Court in no uncertain terms held that such persons whose name figured in the second select list prepared pursuant to the order of this Court dated 24.02.1992 passed in C.W.J.C. No. 7932 of 1991 shall continue to be employed and their inter se seniority shall depend on their respective position in select list in accordance with law. I have no hesitation in directing by issuing appropriate writ directing the Respondents to place the petitioner at appropriate position in the seniority list of Junior Field Investigators on the basis of merit position in the second merit-list prepared on the basis of selection held pursuant to advertisement No. 19/87. The petitioner's seniority is, therefore, directed to be re-fixed accordingly within six months from today.

13. I am of the considered view that petitioner was wrongly kept out of job for the period in question and, therefore, for the purpose of petitioner's claim for promotion for fixation of salary/promotion etc., he should be treated to be at par with the person immediately below him in the second merit-list working in the Directorate of Statistics and decision must be taken in this regard within the aforesaid period of six months.

14. It is observed that if such exercise adversely affects the seniority position of other persons, such other person should be given

notice by the Respondent No. 6. In any event entire exercise must be completed within a period of six months from the date of receipt of production of a copy of this order.

15. The respondents will thereafter, consider his case for promotion from retrospective date to any higher post to which persons similarly situated have been granted such promotion. Arrears of salary arising out of grant of such retrospective promotion should also be calculated and paid to him within a period of two months thereafter.

16. Now comes a question as to whether a direction should be issued to the Respondents for payment of salary for the period 27.04.1993 to 29.03.1995 when the petitioner was kept out of service.

17. As has been noted above, I find that there was no justification for the Soil Conservation Directorate to remove the services of the petitioner with effect from 27.04.1993, unilaterally without even waiting for any action on the recommendation of Bihar Public Service Commission for his appointment in Statistics Directorate. Secondly, there was an interim order of this Court whereby the order of removing the petitioner from service dated 27.04.1993 was stayed. Subsequently, The Court while finally adjudicating upon the case i.e. C.W.J.C. No. 4921 of 1993 (Law Lal & Ors. Vs. State of Bihar) specifically held that the persons whose names figured in the second merit-list shall continue to be implied. In

such circumstance, there could have been no justification for the respondents to keep the petitioner away from job.

18. Learned counsel appearing on behalf of the petitioner has relied on a judgment of Supreme Court reported in A.I.R. 1991 SC 2010 (Union of India Vs. K.V. Jankiraman).

19. In view of the facts and in view of the submissions advanced on behalf of the parties, I would hold that petitioner is also entitled for the salary for the period in question i.e. 27.04.1993 to 29.03.1995.

20. I accordingly direct the Chief Secretary, Government of Bihar to take a final decision and to ensure that the petitioner is paid his arrears of salary for the period in question treating him to be on duty, within the aforesaid period of six months from the date of receipt/production of a copy of this order.

21. This application is allowed.

22. There shall be no order as to costs.

(Chakradhari Sharan Singh, J.)

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